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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,587	02/08/2002	Joseph J. Pantuso	NAIIP096/02.015.01	2682
28875	7590	10/04/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			TRUONG, LECHI	
			ART UNIT	PAPER NUMBER

2194

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,587

Applicant(s)

PANTUSO ET AL.

Examiner

LeChi Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-29 are presented for the examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-29 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.
3. Claims 1, 24 are directed to method steps, which can be practiced mentally in conjunction with pen and paper, therefore they are directed to non-statutory subject matter. Specifically, as claimed, it is uncertain what performs each of the claimed method steps. Moreover, each of the claimed steps, selecting, installing, wrapping, can be practiced mentally in conjunctions with pen and paper. The claimed steps do not define a machine or computer implemented process (see MPEP 21061). Therefore, the claimed invention is directed to non-statutory subject matter. (The examiner suggests applicant to change "method" to "computer implemented method" in the preamble to overcome the outstanding 35 U.S.C. 101 rejection).
3. Claims 15-21, 22 are non-statutory because it is not tangibly embodied in a manner so as to be executable as the only hardware is in an intended use statement.

Claims 15, 22 define "System" in the preamble and the body of the claim recites "selecting", "installing", "wrapping". Selecting, installing, wrapping appear to be software

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functions, which are not tangible. Therefore, claims 15, 22 are non-statutory because it recites a system claim that comprises non-tangible embodiments.

3. Claim 23 is rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter as not being tangible because the data structure stored in a memory claim do not require use of hardware computer to perform, and would not result in a practical application producing a useful, concrete, an tangible result to form the basis of statutory subject matter under 35 USC 101.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 8, 15, 22-24, 26, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller et al (US. Patent 5,473,777) in view of Sitbon et al (US. Patent 5,568,487) and further in view of Schwabe (US. 6,651,186 B1).

3. As to claim 1, Moeller teaches the invention substantially as claimed including: a group of application (application 130,132, 134, col 6, ln 48-50/ Fig. 1), a first application programming interface (function calls, col 6, ln 51-53), a second application programming interface

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(procedural function calls, col 10, ln 30-31), conjunction with application programming interface to gain access (col 6, ln 45 –54), the first application program interface adapted for permitting the applications to gain access to the networking(col 3, ln 52-58).

4. Moeller does not explicit teach a second application programming interface adapted for precluding the applications from accessing, wrapping the selecting application for allowing the selected applications to access the network via the second application program interface.

However, Sitbon teaches a second application programming interface adapted for precluding the applications from accessing (when the socket interfaces calls have no correspondence with the XTT interface, col 5, ln 50-55/ the interface calls must be converted in order to access to the network because this interface calls preclude to access the network, col 1, ln 40-46), wrapping the selecting application for allowing the selected applications to access the network via the second application program interface(the various calls SC+SY are then rerouted to the wrapper W .. the wrapper w is to automatically convert the address... after converting the calls SC+ SY indented for the TCP/ IP network are transmitted to the XTI interface, col 3, ln 5-14).

5. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Moeller and Sitbon because Sitbon's wrapping the selecting application for allowing the selected applications to access the network via the second application program interface would allow the TCP/IP network access to the OSI/CO network that does not require modifying the source code.

6. Moeller and Sitbon do not explicit teach selecting applications for working in conjunction with a first application program interface. However, Schwabe teaches selecting applications for

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working in conjunction with a first application program interface (determine whether the first program unit implementation is consistent with a first program unit API, col 12, ln 13-16).

7. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Moeller, Sitbon and Schwabe because Schwabe's selecting applications for working in conjunction with a first application program interface would improve the efficiency of Moeller and Sitbon's systems by allowing program verifying to ensure binary compatibility.

8. As to claims 8, 15 and 22-24, they are apparatus claims of claim 1; therefore, they are rejected for the same reason as claim 1 above.

9. As to claim 26, Sitbon teaches the application program include a word processor application, a database program, a browser program, a development tool program, a drawing program, image editing program, and a communication program (col 1, ln 40-45).

10. As to claim 29, Sitbon teaches the second application program interface is separate from the first application program interface (col 2, ln 25-30).

11. Claims 2-6, 9-13, 16-20, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller et al (US. Patent 5,473,777) in view of Sitbon et al (US. Patent 5,568,487), in view of Schwabe (US. 6,651,186 B1), as applied to the claim 1, above and further in view of OPT (Optimizations).

12. As to claim 2, Sitbon teaches compressing data that provide compression of data associated with the applications (col 3, ln 9-12).

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13. Moeller, Sitbon and Schwabe do not teach a portable executable image. However, OPT teaches a portable executable image (a portable executable image, page 2, ln 24-26/ page 3, ln 16-19).

14. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Moeller, Sitbon, Schwabe and OPT because OPT's a portable executable image would improve the use of Moeller, Sitbon, Schwabe's systems by decreasing the image size and increasing the program speed at a cost of increased link time.

15. As to claim 3, Moeller teaches extractor the data in the PE image (col 19, ln 67 to col 20, ln 1-5/col 22, ln 43-45/ col 23, ln 35-37/ col 24, ln 10-15).

16. As to claim 4, Moeller teaches the extractor code is further adapted for interfacing with the second application program interface (col 9, ln 1-5). The extractor code is wrapper for implementing the API of the class library.

17. As to claim 5, Moeller teaches the wrapper is further adapted for identifying a location in memory (col 24, ln 28-32).

18. As to claim 6, Moeller teaches the location in memory is where a routine is stored for allowing the selected applications to access the network (col 9, ln 17-20).

19. As to claims 9-13, 16-20, they are apparatus claims of claims 2-6; therefore, they are rejected for the same reasons as claims 2-6 above.

20. As to claim 25, OTP teaches a header, a stub program, a file signature, a text section header, a .bss section header, a .rdata section header, and a .debug section header (the sections in the portable executable image, page 2, ln 24).

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21. Claims **7, 14 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller et al (US. Patent 5,473,777) in view of Sitbon et al (US. Patent 5,568,487) in view of Schwabe (US. 6,651,186 B1), as applied to the claim 1 above, and further in view of Alexander et al (US. Patent 6,748,343 B2).

22. As to claim 7, Moeller, Schwabe and Sitbon do not teach a user to select the application to be allowed to access the network. However, Alexander teaches a user to select the application to be allowed to access the network (a user interface for obtaining a user selection of client, premises, location, monitoring device... and to transmit the data to the processing server, col 19, ln 53-56).

23. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Moeller, Sitbon, Schwabe and Alexander because Alexander's a user to select the application to be allowed to access the network would improve the efficiency of Moeller, Sitbon, Schwabe's systems by allowing the computer to transmit the user selection to a processing server which configures one or more monitoring devices.

24. As to claims **14, 21**, they are apparatus claims of claim 7; therefore, they are rejected for the same reason as claim 7 above.

25. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller et al (US. Patent 5,473,777) in view of Sitbon et al (US. Patent 5,568,487), in view of Schwabe (US. 6,651,186 B1), as applied to the claim 1 above, and further in view of Michael Norton (Basic of network Segmentation: Switching and bridging).

26. **As to claim 27**, Moeller, Sitbon, Schwabe do not teach the network utilizing a network card. However, Michael teaches (a network card will attempt one more to transmit the frame, sec: Consuming bandwidth on a single segment, ln 4-5).

27. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Moeller, Sitbon, Schwabe and Michael because Michael's network card would improve the use of Moeller, Sitbon, Schwabe's systems by providing the listen to the physical layer for the communication on the OIS network.

28. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller et al (US. Patent 5,473,777) in view of Sitbon et al (US. Patent 5,568,487) and further in view of Schwabe (US. 6,651,186 B1), as applied to claim 1 above, and further in view of Bermudez et al (US. 6,874,149 B1).

29. **As to claim 28**, Moeller, Sitbon, Schwabe do not teach a modify copy of the first application program interface. However, Bermudez teaches a modify copy of the first application program interface (this modified copy of the API, col 4, ln 22-25).

30. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Moeller, Sitbon, Schwabe and Bermudez because Bermudez's a modify copy of the first application program interface would improve the use of Moeller, Sitbon, and Schwabe's systems by allowing a component such as an unprotected memory dynamically linked library to provide an alternative implementation to an API function.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is (571) 272 3767. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

LeChi Truong

September 23, 2005


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